INSURANCE—STIPULATION IN APPLICATION—MATERIALITY OF REPRESENTATION.—It was expressly stipulated in an application for insurance that each statement should be material to the risk. The application was appropriately made a part of the policy. In an action on the policy, *held*, that the question of the materiality of representations as to diseases previously afflicting insured should have been submitted to the jury and that the stipulation in the application was ineffectual to make the representations conclusively material. *Fidelity Mut. Life Ins. Co.* v. *Miazza* (1908), — Miss. —, 46 South. 817.

In a number of states there are statutes that provide in substance that the untruth of no representation shall avoid insurance unless material to the risk or fraudulently made. MO. ANN. STATUTES, Vol. 3, § 7890; MINN. REV. LAWS 1905, § 1623. Under these statutes it is very properly held that such a stipulation as appears in the principal case is of no avail to render a representation immaterial in fact material. The express provision of the law prevails. But where no such statute intervenes, and there is none in Mississippi, there is a uniformity of judicial decision that such a stipulation is conclusive between the parties. Statements made under such stipulations are deemed material, whether so or not. *Life Association* v. *Leflore*, 53 Miss. 1; *Johnson* v. *Ins. Co.*, 83 Me. 182; *Swick* v. *Ins. Co.*, 2 Dill. 160; *Conn. Mut. Life Ins. Co.* v. *Young*, 77 Ill. App. 440. The principal case cites *Life Association* v. *Leflore*, supra, and attempts to distinguish it on the ground that the representation in that case was in fact material. The unequivocal language of the decision, however, shows that the court in that case did not base its decision on the actual materiality of the representation.

INTOXICATING LIQUORS—LOCAL OPTION LAW—SALES—ACTS CONSTITUTING.—The prosecuting witness testified that he went to the defendant's clubroom to obtain whisky. The defendant had none, but said the witness might borrow some, suggesting a party present. This was done with the understanding that when the whisky which the witness had ordered should come, the third party should have it in return for that loaned. *Held*, a sale in violation of the local option law. *Coleman* v. *State* (1908), — Tex. Cr. App. —, 111 S. W. 1011.

Barter is the exchange of one article for another, no price in money being fixed upon either. MECHEM, SALES, Vol. 1, p. 13. A sale, on the other hand, requires the transfer to be in consideration of a price in money. In the principal case some money did change hands, but the evidence as to its purpose or its disposal must have been slight, for the court discusses it as a case of borrowing. The court cites the following authorities to show that this is a sale: *Tombeaugh* v. *State*, — Tex. —, 98 S. W. 1054; *Taggert* v. *State*, — Tex. —, 97 S. W. 95; *Treadway* v. *State*, 42 Tex. Cr. R. 466, 62 S. W. 574. In all of these cases, however, it was clear that the purpose was to evade the law. The dissenting opinion in the principal case inclines to the rule as established in *Ray* v. *State*, 46 Tex. Cr. R. 176, 79 S. W. 535, which case had, however, been overruled in *Tombeaugh* v. *State*. The *Ray*

case discusses the difficulty which courts have had in determining what the term "sale" imports, as in some it imports only a money consideration; in others the exchange of intoxicants for another commodity; and under peculiar circumstances the loan of intoxicants to be returned in kind. The case of *Commonwealth* v. *Abrams,* 150 Mass. 393, seems to be in the last class. All the cases cited in this connection, however, tend to show that to constitute such barter a sale the intent must be to evade the law. The law is intended "to cover every transfer of intoxicants for value in whatever form the consideration," but it is not the meaning of the law nor the intent of the legislature to hold as a sale the mere loan by one neighbor to another of intoxicants until that neighbor could return the same amount of intoxicants. Thus, in connection with the liquor laws, the authorities are broadening the meaning of the word sale. Barter in its strict sense of exchange, with no money consideration, is losing its original meaning, and is coming to be looked upon as the possible basis of a sale.

JUDGMENT—COLLATERAL ATTACK—MISTAKE IN NOTICE—SUFFICIENCY.—In this case, a proceeding to try title to land, both parties claimed title through a common source. Plaintiff claimed by virtue of a quit claim deed from the said common source of title. Defendant claimed by virtue of a sale on attachment under a foreign judgment. The owner of the land through whom both parties claim resided outside the state where the land was situated, and the judgment in the attachment proceedings was obtained by default. In that suit the order of publication, required by statute to state the objects of the suit, while stating the general nature of the proceedings, misstated the county in which the judgment sued on was obtained, and plaintiff claimed that this defect rendered the judgment void. *Held,* that the notice was sufficient, and the judgment valid. *Randall* v. *Snyder et al* (1908), — Mo. —. 112 S. W. 529.

It is a well settled principle that in order to render a judgment by default valid the defendant must have notice, either actual or constructive, of the proceedings against him, and a judgment on an amended pleading is void unless notice of amendment is given. *Janney* v. *Spedden,* 38 Mo. 395; *Leavenworth Terminal Ry. & B. Co.* v. *Atchison,* 137 Mo. 218, 37 S. W. 915; *Furlow* v. *Miller,* 30 Tex. 29. While the principal case is not strictly a case of an amended pleading, yet the rules that govern such cases must apply here. The principle requiring that notice of amendment be given would also seem to require that the notice given on the commencement of the suit should correctly inform the defendant of the nature of the suit against him; and such seems to be the holding of the courts. In *Bobb* v. *Woodward,* 42 Mo. 482, the court, discussing the statute involved in the principal case, says that the statute must be substantially complied with, and that a notice to be valid must apprise the defendant in every essential particular of the objects and general nature of the suit. In the principal case the court holds that there has been no amendment of the petition, and that the mistake of the clerk in misdescribing the court in which the judgment was rendered was not of such a nature as to make the order of publication fail to notify